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South Carolina House of Representatives

J. Johnson
Landrum

Legislative Update



David H. Wilkins, Speaker of the House

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WEEK IN REVIEW

HOUSE

The House of Representatives amended and sent to the Senate H.4631, the "South Carolina School Safety Act of 1998." This legislation allows the governing body of a municipality or county to designate school resource officers to work within the local government's school systems. The bill provides the school resource officer with statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school-sponsored event. Current law requires school administrators to contact law enforcement officers immediately upon notice that a person is engaging or about to engage in school-related crime. This bill states that the failure of a school administrator to report the criminal conduct will subject the administrator and the school district to liability to pay a party's attorney's fees and the costs associated with an action to compel compliance with the reporting requirements. The amendment to the bill adds notification requirements if a student has been convicted of certain weapons or drug offenses. The appropriate agency (for example, the Department of Juvenile Justice) or the clerk of court (if the student is not sentenced to probation or incarceration) is required to provide immediate notice of the student's conviction or adjudication to the senior administrator of the school where the student is enrolled.

The House concurred in Senate amendments to H.4816, a concurrent resolution which calls for a joint assembly at noon on May 6 for the purpose of holding elections to fill various vacancies in the state's judiciary, the Legislative Audit Council, and the Consumer Affairs Commission.

The House sent to the Senate concurrent resolution H.4980 which calls for a joint assembly to fill vacancies on specified boards of trustees for various educational institutions immediately following the elections on May 6.

The House concurred in Senate amendments to S.332 and enrolled the bill for ratification. This bill concerns confiscated pistols used in the commission of a crime, and gives the police chief or the sheriff the authority to destroy the pistol (current law provides that the pistol must be transferred to the clerk of court or to the mayor for destruction). The bill also prohibits any disposition of the pistol until the results of any legal proceedings involving the pistol are completed. As amended, the bill allows certain individuals (judges, solicitors, assistant solicitors, and Workers' Compensation commissioners) to carry a concealable weapon anywhere within the state when carrying out the duties of their office.

The House sent to the Senate H.3533, as amended, which concerns the validity of state laws and regulations. The S.C. Supreme Court has held that a statute will not be declared unconstitutional unless its repugnance to the South Carolina Constitution is "clear and beyond a reasonable doubt." See *State v. Hornsby*, 484 S.E.2d 869 (S.C. 1997). The bill provides that when a party seeks to overturn or strike down an act, resolution, or law of this State, the

party must prove "beyond a reasonable doubt" that the act, resolution, or law is unconstitutional. The bill requires the court to ensure that the plaintiff has served the S.C. Attorney General with a copy of all pleadings in the action. The bill also requires the Attorney General, upon conclusion of the action, to promptly notify the Speaker of the House, the President Pro Tempore of the Senate, and the chairmen of the Senate and House Judiciary Committees if the court in its ruling declares an act, resolution, or law enacted by the General Assembly as unconstitutional or otherwise without force and effect.

The House amended and sent to the Senate H.4463. The bill provides that a person or business commits the offense of furnishing false information if the person or business knowingly furnishes false information about another person's creditworthiness, credit standing, or credit capacity to a credit reporting bureau. Furthermore, a credit reporting bureau commits the offense of furnishing false information if the credit reporting bureau knowingly furnishes false information about a person's creditworthiness, credit standing, or credit capacity to a third party. Violators of these provisions must be fined not more than \$2,000.

The House amended and sent to the Senate H.4655 which sets goals for South Carolina to reduce the flow of solid waste being disposed in municipal solid waste landfills and incinerators. The bill sets the statewide goal for the reduction of solid waste being generated to 4.3 pounds per-person per-day by June 30, 2005. The bill also requires the State to continue setting goals for solid waste recycling and waste reduction after June 30, 2005. The bill adds a definition for municipal solid waste and authorizes the Department of Health and Environmental Control (DHEC) to establish procedures and promulgate regulations necessary to obtain recycling data. These procedures may include registration of recyclers, a requirement for recyclers to submit annual reports showing the county where the materials are generated, and the amounts of materials recycled. A manufacturer or distributor of containers produced from a plastic resin may adopt a labeling classification number and letter that will assist in the segregation and collection of that resin for recycling if the code number and letter used are nationally recognized industry standards.

The House amended and sent to the Senate H.4949 This bill concerns an owner or lessee of real property seeking to improve, repair, or maintain his property that is so situated that it is impossible to perform the repairs without entering the premises of an adjoining property. Under the provisions of the bill, if permission to enter the adjoining property has been denied, or unreasonable conditions have been placed upon the entry, the owner seeking to make the improvements may petition the circuit court for a license to enter the adjoining property. The petition may not be filed until after a good faith effort to obtain permission to enter the adjoining property has been made. The license may be granted if the court finds that the entry upon the adjoining property does not irreparably or unreasonably damage the adjoining property, there is no unreasonable encroachment or burden upon the adjoining property; and the license is reasonably necessary. If the court grants the license, it must specify the nature of the improvements, repairs, or maintenance to be accomplished, and the manner in which they will be made. The court may include any other terms and conditions considered appropriate to minimize disruption to the adjoining owner's use of his property. The licensee must in all respects restore the adjoining land to its condition prior to entry and is liable for actual damages occurring as a result of the entry. The court may require that an appropriate bond or other security be posted by the licensee and must require the licensee to provide

adequate liability and workers' compensation insurance to indemnify the adjoining property owner against claims arising from the work authorized by the license.

The House amended and sent to the Senate H.4696, concerning alcoholic beverage control laws affecting wine only. The bill regulates certain practices between wine producers, wine wholesalers, and wine retailers.

The House returned S.593 to the Senate with amendments. The bill provides for regulations specifically geared to Bed and Breakfast Establishments. The legislation authorizes a bed and breakfast with a residential kitchen to provide breakfast to registered guests, only, without adhering to the more stringent regulations which the Department of Health and Environmental Control establishes for restaurants, hotels, cafes, and other dining establishments. Should a bed and breakfast establishment serve meals other than breakfast or serve patrons other than registered guests, standard DHEC regulations must be followed. The bill provides sanitation and fire safety requirements for bed and breakfast establishments. Under the amendment approved by the House, a bed and breakfast with a residential kitchen which provides breakfast to registered guests, only, need not obtain a food service permit from DHEC. The amendment also adjusts fire safety requirements.

The House amended and sent to the Senate H.4439 which prohibits a claimant from commencing a suit against a former shareholder of a dissolved corporation arising from the liabilities of the corporation or arising from acts of the corporation unless the suit is commenced within ten years after the corporation's dissolution. Furthermore, no judgment against a dissolved corporation may be satisfied by proceeding against or joining an individual shareholder unless a suit has been filed against the dissolved corporation and the shareholders within ten years of the dissolution of the corporation. The House amended the bill so as to provide that the legislation will *not* apply retroactively, as had been previously provided.

The House approved and enrolled for ratification S.986 which would require the staff of a county board of registration to complete a training and certification program conducted by the State Election Commission. Furthermore, following initial certification, each board member and staff person designated by the board or commission must take at least one training course each year.

The House amended and recommitted to the Judiciary Committee H.3888, which includes cigarette rolling paper and cigars in the list of tobacco related items that may not be sold or given to a minor under the age of 18. The bill increases the penalty for violating this prohibition (for a first offense, a fine of at least \$100; for a second offense, a fine of at least \$200; and a third or subsequent offense, a fine of at least \$200 or imprisonment for up to 30 days). All fines must be paid to the county treasurer where the conviction occurred. The House amended the bill to provide that violations shall be tried in magistrate's court.

The House concurred in Senate amendments to H.4691, the South Carolina Rendering Act of 1998, and enrolled the bill for ratification. Rendering is the processing of inedible parts of livestock or poultry carcasses and other raw material, and includes the collection and transporting of raw material for processing. The bill establishes standards for rendering operations, and provides for permits, inspections, and penalties for violations. The State

Livestock-Poultry Health Commission is the governing and policy making body and is authorized to promulgate regulations necessary to carry out the Act. The director of the Division of Livestock-Poultry Health Programs at Clemson University administers and enforces the laws relating to rendering livestock, poultry, and raw material in South Carolina.

The House concurred in Senate amendments to joint resolution H.4640 which requires all persons engaged in pesticide control operations to ensure that compressed gas tanks or cylinders used to supply propellant for pesticides are equipped with properly functioning back flow prevention devices.

The House appointed a conference committee to resolve differences with the Senate on S.852 which creates the Jocassee Gorges Endowment Fund.

The House concurred in Senate amendments to H.3789 and enrolled the bill for ratification. The bill revises restrictions on the taking of certain saltwater fish.

The House tabled H.3730 which establishes "No Wake Zones" on certain creeks and coves on Hilton Head Island.

The House adopted House Resolution H.4935 which encourages the State Department of Education to adopt a resolution authorizing each school to post a copy of the Ten Commandments in the lobby of the school, without using public funds.

SENATE

The Senate gave third reading to the following bills: H.4644, a joint resolution requiring the State to set aside \$1,500,000 annually to pay fees and expenses of private counsel appointed in noncapital cases; S.987, relating to the horizontal property act; and S.1126, concerning the duty of the governing body of a municipality to enact ordinances regarding time requirements for nominations and primaries.

The Senate adopted a motion which puts the video poker debate off until after consideration of the General Appropriation Bill (or until a decision concerning video poker has been rendered by the State Supreme Court).

HOUSE COMMITTEE ACTION

AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS

The full Agriculture, Natural Resources and Environmental Affairs Committee did not meet this week.

EDUCATION AND PUBLIC WORKS

The House Education and Public Works Committee gave a favorable report with amendment to **H.4587**. This bill requires that on November 11 of each year (a legal holiday in South Carolina), to commemorate and honor all veterans, all elementary, middle, and high schools in South Carolina, if they are open, must devote the *entire school day* to a study of the *US Constitution* and the *Declaration of Independence*. If these schools are not open on November 11, they must give this instruction on the day the school is open immediately preceding November 11. The committee amended the bill to provide that such study shall be provided for at least *one hour* of the school day in either classroom instruction or at a student body assembly program.

The committee gave a favorable report with amendment to **H.4750**. This bill authorizes (or in some instances requires) the SC Department of Transportation (DOT) to: establish with the State Treasurer special funds out of the DOT's funds for proper accounting purposes; relax design and construction standards for highway projects in the secondary state highway system without incurring liability; expend all cash balances brought forward from a prior year, up to a maximum limit specified in the bill; secure bonds and insurance covering activities of the DOT; provide its employees with equal compensation increases, health insurance benefits, and employee bonuses provided in the state's general appropriations act (a requirement); establish a schedule of document fees. The committee amended this bill to provide that DOT employees shall receive *at least* equal compensation increases, health insurance benefits, and employee bonuses provided in the state's general appropriations act.

The committee gave a favorable report with amendment to **H.4642**. This bill amends *Act 258* of 1998, which became law on January 15 of this year. The bill adds a provision to *Act 258* that a person who holds a valid restricted driver's license on July 1, 1998, may obtain a regular driver's license before the age of seventeen if, after one year from the date of issuance of the special restricted license, the driver has not been convicted of a point-assessable traffic offense posted to his driving record during that period. The committee amended the bill by adding a provision repealing *SC Code* Section 56-1-141, which relates to the equivalence of successful completion of a qualified school driver's education program with meeting department standards for a driver's permit or license.

The committee gave a favorable report with amendment to **H.4933**. This bill provides that if a school district is unable to employ a sufficient number of foreign language teachers for its elementary or secondary foreign language programs, the State Board of Education may grant a waiver to that district which will permit it to employ foreign nationals to teach their native or acquired language in the schools of the district for a maximum of three years. The bill requires that these foreign nationals must have appropriate work clearances and must meet all requirements for SC teacher certification except that they are not required to be US citizens nor are they required to meet ~~current requirements~~ for examination regarding the provisions of the US Constitution and their loyalty thereto. The committee amended the bill by adding a provision that these foreign nationals must meet all requirements for teacher certification *prior to employment* and adding a provision that the State Department of Education must promulgate regulations for the implementation of these provisions.

The committee gave a favorable report with amendment to **S.992**. This bill adds a section to the *SC Code* regarding the payment and collection of tolls. The bill provides that if a vehicle drives through a turnpike facility without payment of the required toll, the owner and operator of the vehicle is liable to the Department of Transportation (DOT) to pay the required toll, administrative fees (maximum amounts are specified in the bill), and civil penalty as provided in the bill; and the DOT may enforce the collection of the toll as provided in the bill. The bill specifies procedures and timelines which must be followed by the DOT and by county magistrates and municipal courts in the event of single and multiple toll violations, including provisions for determining that the person or entity charged is liable, and the magistrate or municipal court's authority to collect the unpaid tolls and administrative fee and forward them to the DOT or its agent. The court may also impose a specified civil penalty, plus court costs and attorney's fees. The bill also makes provisions for toll violations when the violating vehicle has been reported as stolen, when the violating vehicle was leased to an entity other than the owner, and when the violating vehicle was operated by someone other than the owner. The bill also provides for setting up and for payment of electronic toll collection accounts. The bill exempts from the payment of tolls public school buses transporting public school children for a school event. The committee amended the bill by deleting the word "public" so as to provide that school buses transporting school children for a school event are exempt from payment of tolls. The committee also struck a provision allowing retroactive application for compliance with the provisions of the bill.

JUDICIARY

The full Judiciary Committee passed **S.1095**, concerning grand juries. This bill states that a person completing his service as a grand juror is exempt from any further jury service in any court in this State for a period of five years. This bill also provides an alternative method for selecting and impaneling grand juries in this State. Under the alternative method, grand jurors would serve six-month terms and may be held over for one additional six-month term. Six of the grand jurors then in service who have not served two consecutive six-month terms would serve an additional six months. No person would serve as a grand juror for more than two consecutive six-month terms. A county governing body, by ordinance, may elect to use the alternative method of selecting and impaneling grand juries and grand jurors in that county based on its determination that grand jury case loads, length of time persons must serve as grand jurors, and other similar concerns require this alternative method.

The full committee amended and passed **S.22**, which revises the State Freedom of Information (FOI) Act. As amended, the bill states that a public body may but is not required to exempt from disclosure certain matters that are currently exempt (including trade secrets, law enforcement records, and certain compensation paid by public bodies). The amended bill further specifies that a public body may exempt from disclosure documents incidental to a proposed contractual arrangement and documents incidental to proposed sales or purchases of property; however, these documents are not exempt from disclosure once a contract is entered into or the property is sold or purchased. A contract for the sale of real estate will remain exempt from disclosure until the deed is executed. Confidential proprietary information provided to a public body for economic development or contract negotiations purposes need not be disclosed. The bill also exempts from disclosure certain matters gathered by a public

body during a search to fill an employment position and certain data collected by staff at an education institution. The bill also specifies when a public body may hold a meeting closed to the public and that no action may be taken in executive session except to adjourn or to return to public session. Furthermore, the members of a public body may not commit the public body to a course of action by a polling of members in executive session.

The full committee amended and passed H.4785. As amended, the bill states that a limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in writing in the partnership agreement if the limited partnership was formed on or after July 1, 1998; or the limited partnership was formed before July 1, 1998, and the partnership agreement governing the limited partnership specifies in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership. If the partnership agreement governing a limited partnership formed before July 1, 1998, does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner. If the partnership agreement of the limited partnership is amended on or after July 1, 1998, to specify the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, the amendment shall apply retroactively to the date of the formation of the limited partnership.

The full committee also amended and adopted H.4884. This bill would allow a lobbyist's principal to provide items such as lodging and meals to legislators who are members of the South Carolina delegation attending a national or regional legislative meeting.

LABOR, COMMERCE AND INDUSTRY

The House Labor, Commerce and Industry Committee met on Tuesday, April 7, and reported out two bills. The Committee gave a report of favorable with amendment to S.310, "The South Carolina Patients' Insurance and Benefits Protection Act." The committee approved an amendment which completely replaces the language of the bill. The legislation approved by the committee requires an employer who offers to at least fifty eligible employees *only* a closed panel health plan (for major medical, hospitalization, and surgical health insurance coverage) to also offer to eligible employees a "point-of-service" option. A closed panel health plan is a network plan which requires insured members to seek covered health care services or supplies exclusively from network providers (except in emergency cases). In contrast, a "point-of-service" option provides coverage under which insured members may obtain covered health care services/supplies from either network providers or from providers outside of the network. Under the legislation, the employer may require an employee who chooses the point-of-service option to pay for any difference in premiums or other payments in excess of the benefits provided under the closed panel plan. The bill provides that differences between the coinsurance percentages for in-network and out-of-network covered benefits in a point-of-service option plan may not exceed twenty percent, or, five percent in the case of services provided by dentists.

The committee also gave a report of favorable with amendment to H.3985, the "Omnibus Health Benefits and Education Act of 1998." The amendment approved by the committee proposes that the text of the bill be completely replaced. The legislation approved by the committee requires a health benefit plan to allow its female enrollees, who are at least thirteen years of age, a minimum of two visits each year, without prior approval, to a obstetrician-gynecologist (OB/GYN) in the health benefit plan. Should the OB/GYN find during these two visits that continued treatment is medically necessary, additional visits must be authorized by the health benefit plan. The health benefit plan must notify enrollees of these benefits. The bill also requires that all health insurers which provide coverage for mastectomies, must provide coverage for hospitalization for at least forty-eight hours following the mastectomy. The bill further requires that all health insurers which provide coverage for mastectomies, must provide coverage for prosthetic devices and restorative surgery following a mastectomy so as to produce a symmetrical appearance. Additionally, the bill requires all health insurers to provide coverage for mammograms and annual pap smears.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The full Medical, Military, Public and Municipal Affairs Committee met on Tuesday, April 7, and gave favorable reports to S.130 and S.1025.

S.130 was reported favorable with amendments. This bill completely revises the Pharmacy Practice Act, which governs the operation of pharmacies and the practice of pharmacists. The bill incorporates most of the current practice act and adds several significant changes to and clarifications of current law. The bill defines and establishes restrictions and minimum standards for "compounding." A definition is also added for the "practice of pharmacy," to include patient counseling and any acts or services necessary to provide pharmacy care and drug therapy management.

The bill amends the composition of the Board of Pharmacy. Presently, the board is comprised of 8 members appointed by the Governor with the advice and consent of the Senate. One member must be a member of the public, six members must be pharmacists representing each of the six congressional districts, and one member must be a pharmacist from the State at Large. S.130 provides that, if no hospital pharmacist is selected from the six congressional districts, the at-large pharmacist member must be a hospital pharmacist. The bill requires the Board of Pharmacy to create a registry for pharmacy technicians who perform pharmacy functions under the supervision of a pharmacist. In addition, the bill allows the Board to approve pharmacy technician training programs but does not require pharmacy technicians to be trained in these programs. The bill requires the pharmacist-in-charge of each pharmacy to develop and implement written policies and procedures to specify the duties to be performed by pharmacy technicians. The bill establishes pharmacist-to-technician ratios from institutional and regular pharmacies. ~~The bill also establishes requirements for pharmacists and facilities for nuclear/radiologic pharmacy practice.~~

A provision is included to cover extraordinary circumstances in which the Governor declares a "State of Emergency." This provision allows a pharmacist to dispense a one-time emergency refill of up to a 15 day supply of a non-controlled substance medication. It also allows a

pharmacist who is licensed in a state other than South Carolina to dispense medications if the pharmacist can verify current licensure and is involved in a legitimate relief effort during the emergency. The bill adds a provision to clarify that nothing in the act mandates payment of insurance benefits for pharmacy goods or services.

The Committee proposed an amendment to **S.130** that deletes two redundant provisions regarding the duties of a pharmacist-in-charge to implement quality assurance programs and to establish policies and procedures for pharmacies. The amendment also corrects a drafting error that deletes the prohibition on allowing one-time prescription transfers for controlled substances. This prohibition is in the current practice act. The amendment also clarifies the limitation on compounding for institutional purposes.

S.1025 received a report of favorable with amendments. This bill requires the South Carolina Department of Corrections (SCDC) to consider placing an inmate in a facility or institution closest to the inmate's home when designating the place of confinement, if at home placement does not jeopardize security. Proximity to a convicted person's home would not have precedence over departmental criteria for institutional assignment. The committee proposed an amendment to **S.1025** that changes a word from "shall" to "may" so that SCDC may consider (rather than requiring SCDC to consider) placing an inmate in a facility or institution closest to the inmate's home.

WAYS AND MEANS

The House Ways and Means Committee gave a favorable report with amendment to **H.4614**. This bill specifies that a governmental entity's lease purchase agreements for energy efficiency products or guaranteed energy savings contracts are not to be included among the lease-purchasing or financing agreements which are subject to the state constitutional debt limitations set for governmental entities. The committee amended the bill by striking all after the enacting words and inserting provisions which provide that in order not to be included among the lease-purchasing or financing agreements which are subject to the state constitutional debt limitations for governmental entities, a lease-purchase agreement must be for acquisition of specified energy efficiency products, or a guaranteed energy savings contract for specified energy conservation measures, where no such lease agreement or contract shall constitute in any manner an agreement, consent, authority, or otherwise to provide retail sales of energy by an energy or power provider or create the authority to sell or provide retail energy or power.

The committee gave a favorable report with amendment to **H.4898**. This bill amends SC law regarding retirement system credit by providing that any member of the SC Retirement System, the General Assembly Retirement System, and the Police Officers' Retirement System with two or more years of creditable service shall receive additional creditable service for the period of his military service at the rate of one year of military service for each *one year* (current law is for each *two years*) of his creditable service excluding any period of creditable military service, as long as he meets certain conditions as specified under current law. The bill also provides that active military duty includes service in the national guard, and the bill specifies how a member may establish creditable service for national guard service. The bill also provides that

the prohibition on duplication of benefits applicable to credit established for federal employment also applies to credit established for service in the national guard and national guard service may not be established for periods of service credited or creditable in the retirement systems which are referenced in this bill. The committee amended the bill by adding a provision which provides that in the case of a member whose military service was rendered before his employment by an employer the payments by the member must be determined on the basis of his earnable compensation at the time he first became a member of the system, and the required employer contribution must be assumed by the *member's current employer*. Current law provides that in such a circumstance, the employer contribution must be assumed by the State.

The committee gave a favorable report to H.4694. This bill amends the *SC Code* relating to eligibility for the State Health and Dental Insurance Plans so as to clarify that the entity formerly known as the Division on Aging, Office of the Governor, is now known as the Office on Aging, and is under the Department of Health and Human Services. The bill also adds to the statutory definitions of "*Employee*," as relates to the SC Retirement System, "an employee of a local council on aging or other governmental agency providing aging services funded by the Office on Aging, Department of Health and Human Services," and adds to the definition of "*Employer*," "a local council on aging or other governmental agency providing aging services funded by the Office on Aging, Department of Health and Human Services."

The committee gave a favorable report with amendment to H.3932. This bill specifies the types of telecommunication services that are taxed under sales and use tax code statutes. Local telecommunication services, cable television subscriber services, and paging and answering services would continue to be taxed at 5%; Internet access by local providers would not be taxed under this bill. The committee amended the bill by changing the effective date to July 1, 1999.

The committee gave a favorable report to H.4435. This bill updates the reference date whereby South Carolina adopts various provisions of the Internal Revenue Code. Also, the bill provides that a taxpayer may elect a 1985 reference date with respect to certain corporate liquidations.

The committee gave a favorable report to H.4801. This bill provides clarifying language concerning types of school materials which qualify for state sales tax exemption. The bill also deletes the requirement that a festival must be listed as a special event in the events calendar provided by the Department of Parks, Recreation, and Tourism before concessions sold at the festival are exempt from sales tax.

The committee gave a favorable report to H.4848. This bill adds a section to the *SC Code*, allowing a specified extension of time to an innocent taxpayer for payment of an amount due, and allowing the Department of Revenue (DOR) to require that the taxpayer furnish a bond. The bill also places frivolous or groundless claims with the administrative law judges rather than with the circuit courts. The bill also provides that any person convicted of assisting in the preparation of a fraudulent return is guilty of a felony and is prohibited from assisting in the preparation of any return (such assistance is also a felony under the bill). The bill also increases from 30 days to 90 days (after final determination is received from the Internal Revenue

Service) the notification period that a corporation is required to provide to the DOR when the taxable income is changed by the Internal Revenue Service. The bill also provides that, when outside contractors are collecting delinquent taxes for the DOR, the contractors may collect on a package of notices in total.

The committee gave a favorable report to H.4850. This bill amends Section 12-8-570 of the *SC Code*, regarding withholding by trust or estate from distribution to a nonresident beneficiary, by providing that this section does not apply to a nonresident beneficiary who is exempt from taxation under the Internal Revenue Code Section 501 or a nonresident beneficiary who agrees to be subject to the jurisdiction of the Department of Revenue and the courts of South Carolina to determine South Carolina tax liability. The bill provides that the agreement is not an admission of tax liability. The bill also amends current law concerning an incorrect withholding exemption certificate, notification of rate of withholding, and appeal of determination. The bill also increases from \$500 to \$1,000 the fine for wilfully supplying to an employer false information or wilfully failing to supply certain information which would require an increase in income tax to be withheld, and provides that offenses in this section are triable in magistrate's court. The bill provides that an individual required to supply information to his employer under Chapter 8 of Title 12 (Income Tax Withholding) of the *SC Code of Laws* who supplies a withholding exemption certificate which exceeds the number to which he is entitled, is liable for a penalty of at least \$50 for each exemption claimed that exceeds the number to which he is entitled, with no maximum penalty provided. Current law caps this penalty at \$1,000.

The committee reported favorably with amendment on H.4851. This bill provides that the expenses for witnesses appearing before the Department of Revenue (DOR) must come from income taxes rather than from the particular tax involved in the proceeding. The bill also lists entities from whom acceptable proof to qualify for water impoundment credit can be obtained. The bill also provides a due date for filing corporate returns for foreign corporations that do not have offices in the United States. The bill also requires those sellers subject to use tax to obtain a retail license. The bill also clarifies the expenditure of the one-time fee on trailers and semi-trailers. The bill requires that interest on refunds to taxpayers must be drawn from the tax type being refunded or credited. The bill also provides, in the case of an underpayment of declaration of estimated tax, a minimum requirement of \$500 before declaration penalties would apply. The bill clarifies that the State Treasurer must reduce the remittance back to counties related to solid waste fees on tires by any credits, refunds, or discounts previously allowed. Other provisions of this bill update to new terminology, make technical corrections, and correct inconsistencies. The committee amended the bill by adding a provision regarding local sales and use tax, requiring that certain misallocations by the State Treasurer made as a result of city or county code errors must be corrected prospectively. The committee also added a provision to the bill regarding the current requirement that lease agreements between counties and other parties must contain provision for fee-in-lieu-of-taxes. That amendment adds water and sewer authorities as subject to the same requirement in this regard as a county, a municipality, a school district, or other political subdivision; the amendment also replaces the word "industry" with "other party" with regard to these agreements; and the amendment adds that these provisions are effective for leases entered into after the approval by the Governor. The committee also struck a section of the bill relating to tax credits against corporate license fees and inserted a provision that corporate license fees may be reduced by

credits currently provided for certain corporate headquarters or by certain other tax credits which are currently allowed, or both.

The committee report favorably on S.396. This bill amends current law relating to the contents of property tax assessment notices by deleting the requirement that the assessment notice must include the percentage change over the prior market value, if there is no change in use or physical characteristics of the property.

The committee reported favorably with amendment on S.443. This bill adds language to the *SC Code* providing that the county assessor has the right to enter and examine all new nonresidential buildings and structures and those portions of an existing building or structure covered by a building permit for renovations or additions. The committee amended the bill by clarifying that the county assessor's right to enter includes all new nonresidential buildings and structures and those portions of an existing *nonresidential* building or structure covered by a building permit for renovations or additions.

The committee gave a favorable report to S.876. This bill amends sections of Titles 11 and 12 of the *SC Code*, concerning duties of the SC Comptroller General and local auditors, so as to eliminate unnecessary reports and procedures, eliminate duplication of effort, and provide for more pertinent data. The bill updates laws pertaining to property tax and local financing reporting procedures so as to be consistent with recent statutory changes, technological progress, changes in accounting methods, and changes brought about by Home Rule.

The committee gave a favorable report to H.4634. This bill provides that when ownership of personal property required to be titled by a state or federal agency (not including motor vehicles or units of manufactured housing) is transferred, the transferor's property tax year for the property ends on the transfer date and a new property tax year begins for the transferee. The bill provides for prorating the taxes due. The provisions of the bill apply only if the transferor files with the auditor before the first penalty date for property taxes a form designed by the Department of Revenue, signed by the transferee, in which the transferor assumes personal liability for his share of the taxes, and which provides that information necessary to prorate and bill the taxes.

The committee gave a favorable report with amendment to H.4802. This bill prohibits transfer or renewal of registration, or transfer of certificate of title, of watercraft with delinquent property taxes. The committee amended the bill by striking it in its entirety and inserting provisions which prohibit renewal (but not transfer) of watercraft registration if the Department of Natural Resources has notice that property taxes are owed on the watercraft. Also, the committee left in the provision from the original bill providing that if renewal of registration has been denied pursuant to these provisions, a tax receipt from the person officially charged with the collection of *ad valorem* taxes in the county of residence must be accepted as proof that the taxes have been paid.

The committee gave a favorable report to H.4822. This bill provides that if a person liable to pay a tax does not pay it after demand, the amount of the tax, including interest, additional tax, addition to tax, or assessable penalty plus accrued costs, is a lien in favor of the Department of Revenue (DOR) on all property and rights to property, real or personal, belonging

to the person. This lien, referred to as a "*tax lien*," is effective on the date of the assessment of the tax and continues for ten years from the date of filing. The bill allows an authorized agent of the DOR to seize, levy on, and sell the property of the person for payment of the amount due, with added penalties, interest, and costs, and to pay the money collected to the DOR. Current statutory provisions include allowing for issuance of a *warrant of distraint* if taxes are not paid *ten days* after they are due and payable, and include a provision that the amount of the warrant is not a lien on the title to and interest in the property of the taxpayer against whom it is issued, *until it is filed* and entered in the judgement docket. The bill also adds a new section to the *SC Code*, providing requirements for validating tax liens in varying circumstances.

The committee gave a favorable report with amendment to **H.4854**. This bill allows a county treasurer to waive, dismiss, or reduce a penalty levied against real or personal property, but does not allow the treasurer to waive, dismiss, or reduce interest on the penalty. The bill also adds provisions to the *SC Code*, providing that if the person charged with collection of *ad valorem* property taxes on real or personal property for a county determines that the tax, assessment, or penalty is uncollectible, he shall record that determination and the reason for it on a list he maintains. The bill also provides requirements and procedures relevant to this property tax list. The bill deletes a current provision (regarding homestead exemption from property taxes) which provides that in the year of reassessment the millage rate for all real and personal property must not exceed the rollback millage, except that the rollback millage may be increased by the percentage increase in the consumer price index for the year immediately preceding the year of reassessment. The bill adds a provision (regarding property classification and assessment) that to qualify for the 4% assessment ratio, the owner-occupant of a legal residence that is being purchased under a contract for sale or a bond for title must record the contract for sale or the bond for title in the office of the register of mesne conveyances or the clerk of court in those counties where the office of the register of mesne conveyances has been abolished. The bill provides that for property tax purposes, the "assessment of the tax" occurs on the later of the last day the tax may be paid without penalty or the date of the tax notice. The bill also provides that, regarding a taxpayer's written request to meet with the assessor, if the assessor agrees with the taxpayer's written objection, the county assessor must correct the error. The bill amends the process of appeal of an assessment by adding a provision imposing a rate of interest of one-half of one percent for each month or portion of a month. The bill also provides that a property taxpayer may make certain written objections, and request in writing to meet with the auditor, at any time on or before the later of 30 days after the tax notice is mailed, or the last day the tax levied upon the assessment must be paid. Current law requires that this written request must be made at any time on or before the last day the tax levied upon the assessment can be timely paid.

The committee amended the bill by striking the provision allowing the county treasurer to waive, dismiss, or reduce a penalty levied against real or personal property, and prohibiting the county treasurer from waiving, dismissing, or reducing interest on the penalty. The committee also amended the bill to provide that a taxpayer may object to a personal property tax assessment or a denial of a homestead exemption made by the county auditor by requesting, in writing, to meet with the auditor at any time on or before the later of 30 days after the tax notice is mailed or the last day the tax levied upon the assessment may be *timely* paid. The original bill included this provision, but did not include the word "*timely*." The committee also

added a provision to the bill, effective upon approval by the Governor for tax years beginning after December 31, 1999, providing that when a certificate of occupancy or other evidence of completion is issued on new construction designated for owner-occupied legal residential use, the use and value of the property which is the subject of the certificate are considered to have changed effective on the date the certificate is issued. The amendment also provides that the property tax on the property for the tax year the certificate is issued must be prorated using the value and owner-occupied legal residential use of the property for each part of the year.

The committee gave a favorable report with amendment to H.4868. This bill revises the definition of "*motor carrier*" as it relates to the assessment of property taxes, by clarifying that the definition extends to the transportation of both property and persons. The bill provides definitions (in the context of property tax assessment) for "*bus*" and for "*gross capitalized cost*." The bill also provides that if a motor carrier fails to file an annual property tax return with the Department of Revenue (DOR), the department must issue a proposed assessment which assumes all mileage was within the state (the value of a motor carrier's vehicles subject to property taxes in SC is based on the ratio of total mileage operated within this state during the preceding calendar year to the total mileage of its entire fleet operated within and without SC during the same preceding calendar year). The bill also revises the basis on which motor vehicle taxes are annually assessed by DOR, adds a requirement that DOR must publish the average millage for the preceding year by June 1 of each year, and deletes a provision that the average millage may be increased to cover loss of revenue incurred by DOR from not licensing trailers. The committee amended the bill by changing the effective date to "upon approval by the Governor for calendar years beginning after December 31, 1997." The original bill's effective date was upon approval by the Governor for calendar years beginning after December 31, 1998.

The committee gave a favorable report to H.4119. This joint resolution proposes an amendment to Section 14(10), Article X, of the *SC Constitution* authorizing the General Assembly to provide by law for counties to incur indebtedness for the purpose of redevelopment and to provide that the debt service for such indebtedness be provided from the added increments of tax revenues to result from such projects.

The committee gave a favorable report with amendment to H.4120. This bill, which if passed would be effective upon ratification of a constitutional amendment to Section 14, Article X of the SC Constitution, authorizing counties to incur indebtedness for redevelopment projects (see H.4119), provides for implementation of such authorization and provides for the payment of such indebtedness from added increments of tax revenues. "Redevelopment projects" are defined in the bill as any buildings, improvements, including street improvements, water, sewer and storm drainage facilities, parking facilities, and recreational facilities. Also, the bill provides that any project authorized under SC Code Section 6-21-50 (*Revenue Bond Act for Utilities - Authorized Public Works Which May be Purchased or Constructed*) may also qualify as a redevelopment project. -All such projects are to be owned by the county. The committee amended this bill to provide that the millage rate for an area under the Tax Increment Financing Law will be calculated using the base assessment of the Tax Increment Financing Law should a municipality annex into a Tax Increment Financing District. The committee also amended the bill to make technical changes and to correct references.

BILLS INTRODUCED IN THE HOUSE

EDUCATION AND PUBLIC WORKS

S.842 SELECTIVE SERVICE REGISTRATION AWARENESS & COMPLIANCE ACT Sen. Leventis

This bill enacts the "*Selective Service Registration Awareness & Compliance Act*," which provides that a male who is eighteen years of age or older and who is not in compliance with the Selective Service Act is ineligible for employment by or service with the State or a political subdivision of the State, and officials in charge of State or local government hiring must verify an applicant's status of compliance with this provision. The bill also provides that a person may not register for a class in a state-supported institution of postsecondary higher education, nor may he receive a loan, grant, scholarship, or other financial assistance for postsecondary higher education funded by State revenue (including a student loan guaranteed by the State), if he is not in compliance with the Military Selective Service Act. The bill requires that a person registering for class at or applying for assistance to attend an institution of postsecondary higher education must affirm that he is in compliance with this provision, and persons having charge of registration at these institutions and of financial assistance as specified in the bill, must verify that registrants or applicants have signed a form indicating compliance with these provisions.

H.4984 REQUIREMENTS FOR HIGH SCHOOL DIPLOMA Rep. Townsend

This bill provides that standard state diplomas and STAR diplomas must be uniform in every respect. The bill also revises the manner in which additional units must be earned for a 24 unit high school diploma. The bill requires that students must earn one additional unit in mathematics, one in science, one in computer technology in which a proficiency may be validated either by course or a certain test, and two units in foreign language for college preparatory students or four units in occupational education for tech prep students. Current law requires that these additional units be earned as follows: one in math, one in science, one in computer science to include keyboarding, one in foreign language for college preparatory students, and one vocational unit for students in a track designed to enter the work force.

JUDICIARY

H.4971 LEGISLATION AFFECTING CHILDREN Rep. Harrison

This bill requires the Department of Social Services (D.S.S.) to provide notice of a hearing concerning child custody or protective services to the foster parent, the preadoptive parent, or the relative who is providing care for a child. Providing notice does not confer on the foster parent, preadoptive parent, or relative the status of a party to the action. The bill specifies when reasonable efforts must be made and when they may be terminated in working with families and children and specifies the conditions under which D.S.S. must initiate or join in a proceeding for termination of parental rights.

The bill states that no foster home may be licensed and no preadoptive home may be approved for placement of a child in the custody of D.S.S. if a criminal history background check or a check of the Central Registry of Child Abuse and Neglect reveals that the person being screened has a history of child abuse or neglect substantiated by an entry in the Central Registry of Child Abuse and Neglect; has pled guilty or nolo contendere or has been convicted at any time of spousal abuse, a felony crime against children, a felony involving personal injury, or a felony drug-related offense. This bill also deletes the provision in current law that states only a special needs child may be referred to a regional or national adoption exchange.

H.4972 NONECONOMIC DAMAGE AWARDS ACT OF 1998 Rep. Rodgers

This bill places a cap of \$200,00 or the amount awarded in economic damages, whichever amount is greater, that a prevailing plaintiff in a personal injury action may recover for noneconomic damages. Additionally, if liability is found in a personal injury or wrongful death action, then the trier of fact must make separate findings for each claimant specifying the amount of any past damages and any future damages and the periods over which they accrue, on an annual basis, for each of the following types of damages: medical and other costs of health care; other economic loss; and noneconomic loss.

H.4976 LIEN FOR A PROVIDER OF MEDICAL SERVICES Rep. Harrison

This bill states that a provider of medical services or medical supplies has a lien on any damages recovered by an injured party in a personal injury civil action to the extent the provider has not been paid for the services or supplies. The lien is valid when the provider asserting the lien files a claim with the clerk of the court in which the personal injury civil action is instituted within 30 days of the institution of the action. The provider must furnish upon request and without charge to the attorney representing the plaintiff in the personal injury civil action, an itemized statement, hospital record, or medical report for the use of the attorney in negotiation of a settlement or trial of the claim.

The attorney for the plaintiff must retain an amount sufficient to pay the just and bona fide claims for medical services and supplies for which valid liens exist and compensation is recovered. Payment of a disputed claim for medical services or medical supplies is not required until the claim is fully established and the amount determined as provided by law. The amount of the lien may not exceed the amount of the claim in dispute.

H.4977 FORFEITED VEHICLE Rep. McLeod

This bill concerns the procedure for seizing a vehicle forfeited because of multiple driving under suspension or driving under the influence convictions. If the person fails to file an appeal within 10 days after the fourth DUS conviction within 5 years, or within 10 days after the fourth DUI conviction within 10 years, the forfeited vehicle must be disposed in the following manner. The sheriff or chief of police must notify the last known registered owner of the vehicle and all lienholders of record that the vehicle has been taken into custody and set forth where the motor vehicle is being held, inform the owner and any lienholders of the right to reclaim the motor vehicle within three weeks after the date of the notice (upon payment of all towing, preservation, and storage charges), and state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided is a waiver by the owner and all lienholders of all right, title, and interest in the vehicle, and consent to the sale of the vehicle at a public auction. Notice by one publication in a newspaper of general

circulation is sufficient to meet all notice requirements if it is impossible to determine the identify of the last registered owner and the identify of all lienholders.

If the vehicle is not reclaimed as provided above, the sheriff or chief of police must sell the vehicle at public auction. The purchaser of the vehicle shall take title to it free and clear of all liens and claims of ownership, receive a sales receipt from the sheriff or chief of police, and is entitled to register the vehicle and receive a certificate of title. The sales receipt is sufficient title only for the purposes of transferring the vehicle to a demolisher for demolition, wrecking, or dismantling without the necessity of additional titling of the vehicle. The costs of the auction, towing, preserving, and storing the vehicle which resulted from placing the vehicle in custody, and all notice and publication costs incurred pursuant to this subsection, must be reimbursed from the proceeds of the sale of the vehicle. Any remaining proceeds from the sale must be deposited in the general fund of the county or municipality.

H.4983 FALSE POLICE REPORT Rep. McLeod

This bill provides that a person who falsely reports a felony is guilty of a felony and, upon conviction, must be imprisoned up to 5 years and/or fined up to \$1000. A person who falsely reports a misdemeanor is guilty of a misdemeanor and must be imprisoned up to 30 days and/or fined up to \$500. In imposing a sentence under this section, the judge may require the offender to pay restitution to the investigating agency to offset costs incurred in investigating the false police report.

S.987 HORIZONTAL PROPERTY REGIME WAIVER Sen. Cork

Current law (S.C. Code Section 27-31-130) provides that all the co-owners or the sole owner of property constituted into a horizontal property regime may waive the regime and regroup or merge the records of the individual apartments with the principal property if the individual apartments are unencumbered, or, provided the apartments are encumbered, if the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors.

This bill provides that notwithstanding the above provision, in the case of nonprofit long-term care retirement or life care facilities if there are co-owners, a two-thirds vote of the co-owners suffices to waive the regime and regroup or merge the records of the individual apartments with the principal property if the individual apartments are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors.

LABOR, COMMERCE AND INDUSTRY

S.994 "SC DEFERRED PRESENTMENT SERVICES ACT" Sen. Short

This bill establishes licensing under the State Board of Financial Institutions for those who offer deferred presentment services, and provides for the regulation of such services. Deferred presentment services (i.e. check cashing) involves accepting a fee in exchange for the service of accepting a dated check and holding that check for a period of time prior to presentment for payment or deposit. Among other restrictions, the bill sets a three hundred dollar limit on the

amount of the check taken for deferred presentment (exclusive of fees); caps fees for presentment at fifteen percent of the face value of the check accepted; limits to thirty one days the amount of time a check may be held for deferred presentment; and, requires conspicuous posting of fees for deferred presentment services.

H.4975 PROXIMITY TO FIRE TRUCKS Rep. Young

This bill pertains to legal restrictions on parking near and driving close to fire trucks and other fire apparatus. The bill broadens language so as provide that the restrictions apply to fire apparatus that is responding to an emergency rather than to a fire alarm, alone.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

S.843 STUDENTS WITH PEDICULOSIS (HEAD LICE) Sen. Peeler

This bill requires a student who is sent home from school for having pediculosis (head lice) to present evidence of treatment and submit to a physical screening (conducted by the school nurse or a person designated by the principal) which indicates an absence of pediculosis before the student returns to school. The bill also requires the Department of Health and Environmental Control (DHEC) to make products or vouchers for products for treatment of pediculosis available to families of children in the public school system who receive Medicaid or free or reduced school meals.

WAYS AND MEANS

H.4966 RETIREMENT SYSTEM FOR JUDGES AND SOLICITORS Rep. D. Smith

This bill decreases from ten to eight the years of credited service required for a solicitor to meet service retirement eligibility requirements. The bill also adds an individual receiving retirement allowances who is employed as an attorney by an employer under the State Retirement System or under the SC Police Officers' Retirement System, as a person eligible to receive retirement benefits while so employed, unless that person opts out of the system while so employed. The bill also provides that in the case of solicitors, any credited service rather than only active service in excess of twenty-four years must be included for purposes of calculating certain additional monthly allowance.

H.4967 SC POLICE OFFICERS' RETIREMENT SYSTEM Rep. D. Smith

This bill adds assistant solicitors, victim/witness advocates and pretrial intervention personnel serving in solicitors' offices, and employees of the Prosecution Coordination Commission as employees who may participate in the SC Police Officers' Retirement System (or they may elect to remain under regular state retirement). Currently, this option is extended only to probate judges.

H.4973 ESTABLISHING CREDIT IN THE SC RETIREMENT SYSTEM Rep. Allison

This bill extends to former employees of any political subdivision of the State, the current method of establishing credit in the SC Retirement System for prior service as an employee of a municipality which is currently not a covered employer under such system.

H.4974 USE OF CONSTITUTIONAL RESERVE FUNDS Rep. Easterday

This joint resolution proposes an amendment to the *SC Constitution* providing that one purpose for which capital reserve fund appropriations may be expended shall be for capital improvements of state agencies, departments, or institutions only for the acquisition or improvement of real property or for other nonrecurring emergency purposes as a result of natural disasters or catastrophes instead of for general capital improvements and nonrecurring purposes.

H.4981 "FEDERAL DEFENSE FACILITIES REDEVELOPMENT LAW" Rep. Beck

This bill amends the "*Military Facilities Redevelopment Law*," which concerns the State's redevelopment authority to acquire and dispose of federal military installations. The bill broadens the authorities in the Act to include, in addition to real property, "*personal property*" - which is all goods, classified as equipment, used or bought for use primarily in the operation of the federal defense facility, not to include certain specified inventory, consumer goods, or farm products. The bill also broadens the sites included in the Act by adding "other federal defense sites," in addition to military installations as currently provided in the Act.

H.4982 PUBLIC EMPLOYEES' DEFINED CONTRIBUTION RETIREMENT PLAN Rep. Stille

This bill adds to current state retirement systems, the "*Public Employees' Defined Contribution Retirement Plan*" (the Plan), to include certain members first employed after June 30, 1999. The bill requires that the current SC Retirement System and the Police Officers' Retirement System continue operating for individuals first becoming members before July 1, 1999, and for former members who are reemployed after June 30, 1999, if they so elect; or these members may irrevocably elect membership in the Plan (the bill provides for transfer of funds in such a circumstance). The bill authorizes the State Budget and Control Board (the Board) to develop and administer the Plan, allows the Board to contract with private entities to administer the day-to-day operation of the Plan, and directs that the funds for the Plan must be held separate from all other funds. The bill requires that the Plan must include more than one employee-directed investment fund appropriate for investment by public employees, and requires that the Plan include an educational program explaining risks and benefits to employees. The bill delineates certain powers and responsibilities for the Board (or the entity which the Board has contracted) in order for the Plan to provide retirement and related benefits similar to those provided under an existing retirement system. Also, the bill requires that the administrator prepare at least quarterly a statement for each member's individual account, and requires audits of the plan's assets.

H.4986 PROPERTY TAX EXEMPTIONS Rep. Riser

This bill provides an exemption from *ad valorem* property taxes for one personal motor vehicle owned or leased by a legal guardian of any person who is blind or required to use a wheelchair when the vehicle is used to transport the person. Current law provides this exemption for the legal guardian of a minor who is blind or required to use a wheelchair.

The *Legislative Update* is on the Worldwide Web. Visit the South Carolina General Assembly Home Page (www.lpittr.state.sc.us) and click on the "Quick Find Guide." On the next screen, click on "Legislative Updates." This will list all of the *Legislative Updates* by date. Click on the date you need.

SPECIAL NOTE: A cumulative index to the weekly issues of the *Legislative Update* has been added to the *Legislative Update* page on the Worldwide Web. Bills are listed in numerical order in this index. Each bill number is followed by a list of hypertext links (in chronological order) to every reference to that bill in any issue of the *Legislative Update* during the current session, 1997-98. This is an easy way (just click on the links) to find summaries of bills introduced into the House and to follow the progress of a bill through House committees and on the floors of the House and Senate.